

SENATE BILL 825

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By: **Senator Kramer**

Introduced and read first time: February 7, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Credit – Commercial Financing Transactions**

3 FOR the purpose of requiring that certain revenue, fees, and examination and investigation
4 fees and assessments relating to commercial financing transactions be credited to
5 the Nondepository Special Fund; regulating commercial financing transactions,
6 including by establishing requirements related to disclosures, calculations of annual
7 percentage rates, terms of repayments, and other related items, and the extension of
8 special offers; making a violation of this Act an unfair, abusive, or deceptive trade
9 practice under the Maryland Consumer Protection Act and subject to certain
10 enforcement and penalty provisions; and generally relating to commercial financing
11 transactions.

12 BY repealing and reenacting, with amendments,
13 Article – Commercial Law
14 Section 13–301(14)(xxxiv) and (xxxv)
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2021 Supplement)

17 BY adding to
18 Article – Commercial Law
19 Section 13–301(14)(xxxvi)
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2021 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Financial Institutions
24 Section 11–610(a)(13)(i), (b)(1), and (c)
25 Annotated Code of Maryland
26 (2020 Replacement Volume and 2021 Supplement)

27 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Financial Institutions

2 Section 12–1101 through 12–1115 to be under the new subtitle “Subtitle 11.
3 Commercial Financing”

4 Annotated Code of Maryland

5 (2020 Replacement Volume and 2021 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

7 That the Laws of Maryland read as follows:

8 **Article – Commercial Law**

9 13–301.

10 Unfair, abusive, or deceptive trade practices include any:

11 (14) Violation of a provision of:

12 (xxxiv) The federal Servicemembers Civil Relief Act; [or]

13 (xxxv) [§] SECTION 11–210 of the Education Article; or

14 (xxxvi) **TITLE 12, SUBTITLE 11 OF THE FINANCIAL**
15 **INSTITUTIONS ARTICLE; OR**

16 **Article – Financial Institutions**

17 11–610.

18 (a) There is a Nondepository Special Fund that consists of:

19 (13) (i) Any other fee, examination or investigation fee or assessment, or
20 revenue received by the Commissioner under this subtitle, Subtitles 2, 3, 4, and 5 of this
21 title, Title 12, Subtitles 1, 4, 9, and 10 of this article, Title 12, [Subtitle] **SUBTITLES 12**
22 **AND 14** of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the Commercial
23 Law Article; and

24 (b) Notwithstanding subsection (a) of this section:

25 (1) The Commissioner shall pay all fines and penalties collected by the
26 Commissioner under Title 2, Subtitle 1 of this article, this subtitle, Subtitles 2, 3, 4, and 5
27 of this title, Title 12, Subtitles 1, 4, 9, [and] 10, **AND 11** of this article, Title 12, Subtitle 14
28 of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the Commercial Law
29 Article into the General Fund of the State; and

1 (c) The purpose of the Fund is to cover the direct and indirect costs of fulfilling
2 the statutory and regulatory duties of the Commissioner and the State Collection Agency
3 Licensing Board related to:

4 (1) Title 2, Subtitle 1 of this article;

5 (2) This subtitle;

6 (3) Subtitle 2 of this title;

7 (4) Subtitle 3 of this title;

8 (5) Subtitle 4 of this title;

9 (6) Subtitle 5 of this title;

10 (7) Title 12, Subtitle 1 of this article;

11 (8) Title 12, Subtitle 4 of this article;

12 (9) Title 12, Subtitle 9 of this article;

13 (10) Title 12, Subtitle 10 of this article;

14 **(11) TITLE 12, SUBTITLE 11 OF THIS ARTICLE;**

15 **[(11)] (12)** Title 7 of the Business Regulation Article;

16 **[(12)] (13)** Title 12 of the Commercial Law Article;

17 **[(13)] (14)** Title 14, Subtitles 12, 19, and 42 of the Commercial Law Article;

18 **[(14)] (15)** Title 7, Subtitles 1, 3, 4, and 5 of the Real Property Article;

19 **[(15)] (16)** Title 26, Subtitle 6 of the Education Article; and

20 **[(16)] (17)** Any other expense authorized in the State budget.

21 **SUBTITLE 11. COMMERCIAL FINANCING.**

22 **12-1101.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

25 **(B) (1) "CLOSED-END FINANCING" MEANS A CLOSED-END EXTENSION OF**

1 CREDIT, SECURED OR UNSECURED, INCLUDING EQUIPMENT FINANCING, THAT:

2 (I) DOES NOT MEET THE DEFINITION OF A LEASE UNDER
3 ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE; AND

4 (II) THE PROCEEDS OF WHICH A RECIPIENT DOES NOT INTEND
5 TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

6 (2) "CLOSED-END FINANCING" INCLUDES FINANCING THAT HAS AN
7 ESTABLISHED PRINCIPAL AMOUNT AND DURATION.

8 (C) "COMMERCIAL FINANCING" MEANS OPEN-END FINANCING,
9 CLOSED-END FINANCING, SALES-BASED FINANCING, A FACTORING TRANSACTION,
10 OR ANOTHER FORM OF FINANCING, THE PROCEEDS OF WHICH THE RECIPIENT DOES
11 NOT INTEND TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD
12 PURPOSES.

13 (D) "FACTORING TRANSACTION" MEANS AN ACCOUNTS RECEIVABLE
14 PURCHASE TRANSACTION:

15 (1) THAT INCLUDES AN AGREEMENT TO PURCHASE, TRANSFER, OR
16 SELL A LEGALLY ENFORCEABLE CLAIM FOR PAYMENT HELD BY A RECIPIENT FOR
17 GOODS THE RECIPIENT HAS SUPPLIED OR SERVICES THE RECIPIENT HAS RENDERED
18 THAT HAVE BEEN ORDERED BUT FOR WHICH PAYMENT HAS NOT BEEN MADE; AND

19 (2) THE PROCEEDS OF WHICH THE RECIPIENT DOES NOT INTEND TO
20 USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

21 (E) (1) "FINANCE CHARGE" MEANS THE COST OF COMMERCIAL
22 FINANCING REPRESENTED AS A DOLLAR AMOUNT.

23 (2) "FINANCE CHARGE" INCLUDES:

24 (I) A CHARGE PAYABLE DIRECTLY OR INDIRECTLY BY A
25 RECIPIENT AND IMPOSED DIRECTLY OR INDIRECTLY BY A PROVIDER AS AN
26 INCIDENT TO OR A CONDITION OF THE EXTENSION OF COMMERCIAL FINANCING;

27 (II) A CHARGE THAT WOULD BE INCLUDED UNDER 12 C.F.R.
28 PART 1026.4 IF A TRANSACTION WERE SUBJECT TO 12 C.F.R. PART 1026.4; AND

29 (III) ANY ADDITIONAL CHARGES DETERMINED BY THE
30 COMMISSIONER.

1 **(F) (1) “OPEN-END FINANCING” MEANS AN AGREEMENT FOR ONE OR**
2 **MORE EXTENSIONS OF SECURED OR UNSECURED OPEN-END CREDIT, THE**
3 **PROCEEDS OF WHICH A RECIPIENT DOES NOT INTEND TO USE PRIMARILY FOR**
4 **PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

5 **(2) “OPEN-END FINANCING” INCLUDES CREDIT EXTENDED BY A**
6 **PROVIDER UNDER A PLAN IN WHICH:**

7 **(I) THE PROVIDER REASONABLY CONTEMPLATES REPEATED**
8 **TRANSACTIONS;**

9 **(II) THE PROVIDER MAY IMPOSE A FINANCE CHARGE ON AN**
10 **OUTSTANDING UNPAID BALANCE; AND**

11 **(III) THE AMOUNT OF CREDIT THAT MAY BE EXTENDED TO A**
12 **RECIPIENT DURING THE TERM OF THE PLAN, UP TO A LIMIT THAT THE PROVIDER**
13 **SETS, IS GENERALLY MADE AVAILABLE TO THE EXTENT THAT ANY OUTSTANDING**
14 **BALANCE IS REPAID.**

15 **(G) (1) “PROVIDER” MEANS A PERSON THAT EXTENDS A SPECIFIC OFFER**
16 **OF COMMERCIAL FINANCING TO A RECIPIENT.**

17 **(2) “PROVIDER” INCLUDES A PERSON THAT SOLICITS AND PRESENTS**
18 **A SPECIFIC OFFER OF COMMERCIAL FINANCING ON BEHALF OF A THIRD PARTY.**

19 **(H) (1) “RECIPIENT” MEANS A PERSON, OR THE PERSON’S AUTHORIZED**
20 **REPRESENTATIVE, THAT APPLIES FOR COMMERCIAL FINANCING AND IS MADE A**
21 **SPECIFIC OFFER OF COMMERCIAL FINANCING BY A PROVIDER.**

22 **(2) “RECIPIENT” DOES NOT INCLUDE A PERSON ACTING AS A**
23 **BROKER.**

24 **(I) (1) “SALES-BASED FINANCING” MEANS A TRANSACTION:**

25 **(I) THAT IS REPAID BY A RECIPIENT TO A PROVIDER OVER TIME**
26 **AS A PERCENTAGE OF SALES OR REVENUE, IN WHICH THE PAYMENT AMOUNT MAY**
27 **INCREASE OR DECREASE ACCORDING TO THE VOLUME OF SALES MADE OR REVENUE**
28 **RECEIVED BY THE RECIPIENT; AND**

29 **(II) THE PROCEEDS OF WHICH THE RECIPIENT DOES NOT**
30 **INTEND TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

31 **(2) “SALES-BASED FINANCING” INCLUDES A TRANSACTION**

1 CONTAINING A TRUE-UP MECHANISM UNDER WHICH THE FINANCING IS REPAID AS
2 A FIXED PAYMENT BUT PROVIDES FOR A RECONCILIATION PROCESS THAT ADJUSTS
3 THE PAYMENT TO AN AMOUNT THAT IS A PERCENTAGE OF SALES OR REVENUE.

4 (J) "SPECIFIC OFFER" MEANS THE TERMS OF COMMERCIAL FINANCING
5 THAT ARE QUOTED TO A RECIPIENT, BASED ON INFORMATION OBTAINED FROM OR
6 ABOUT THE RECIPIENT, WHICH IF ACCEPTED BY THE RECIPIENT ARE BINDING ON A
7 PROVIDER, AS APPLICABLE, SUBJECT TO REQUIREMENTS STATED IN THE TERMS OF
8 THE COMMERCIAL FINANCING.

9 12-1102.

10 THIS SUBTITLE DOES NOT APPLY TO:

11 (1) A FINANCIAL INSTITUTION;

12 (2) A PERSON ACTING AS A TECHNOLOGY SERVICES PROVIDER TO AN
13 ENTITY EXEMPT UNDER THIS SECTION FOR USE AS PART OF THE ENTITY'S
14 COMMERCIAL FINANCING PROGRAM IF THE PERSON DOES NOT HAVE AN INTEREST,
15 ARRANGEMENT, OR AGREEMENT TO PURCHASE ANY INTEREST IN THE COMMERCIAL
16 FINANCING EXTENDED BY THE ENTITY IN CONNECTION WITH THE COMMERCIAL
17 FINANCING PROGRAM;

18 (3) A LENDER REGULATED UNDER THE FEDERAL FARM CREDIT ACT;

19 (4) A COMMERCIAL FINANCING TRANSACTION SECURED BY REAL
20 PROPERTY;

21 (5) A LEASE AS DEFINED IN ARTICLE 2A OF THE UNIFORM
22 COMMERCIAL CODE;

23 (6) A PROVIDER OR OTHER PERSON WHO MAKES NO MORE THAN FIVE
24 COMMERCIAL FINANCING TRANSACTIONS IN THE STATE IN A 12-MONTH PERIOD;

25 (7) A COMMERCIAL FINANCING TRANSACTION OVER \$2,500,000; OR

26 (8) A COMMERCIAL FINANCING TRANSACTION:

27 (i) IN WHICH THE RECIPIENT IS:

28 1. A DEALER, OR AN AFFILIATE OF A DEALER, AS
29 DEFINED IN § 11-111 OF THE TRANSPORTATION ARTICLE; OR

1 **2. A RENTAL VEHICLE COMPANY, OR AN AFFILIATE OF A**
2 **RENTAL VEHICLE COMPANY, AS DEFINED IN § 18-108 OF THE TRANSPORTATION**
3 **ARTICLE; AND**

4 **(II) MADE UNDER A COMMERCIAL FINANCING AGREEMENT OR**
5 **COMMERCIAL OPEN-END CREDIT PLAN OF AT LEAST \$50,000, INCLUDING A**
6 **COMMERCIAL LOAN MADE IN ACCORDANCE WITH THE COMMERCIAL FINANCING**
7 **TRANSACTION.**

8 **12-1103.**

9 **(A) (1) FOR PURPOSES OF DETERMINING WHETHER A FINANCING**
10 **TRANSACTION IS A COMMERCIAL FINANCING TRANSACTION, A PROVIDER MAY RELY**
11 **ON A STATEMENT OF INTENDED PURPOSE MADE BY A RECIPIENT.**

12 **(2) A RECIPIENT'S STATEMENT OF INTENDED PURPOSE MAY BE:**

13 **(I) CONTAINED IN THE COMMERCIAL FINANCING**
14 **APPLICATION, COMMERCIAL FINANCING AGREEMENT, OR OTHER DOCUMENT**
15 **SIGNED OR CONSENTED TO BY THE RECIPIENT;**

16 **(II) A SEPARATE STATEMENT SIGNED, MANUALLY OR**
17 **ELECTRONICALLY, BY THE RECIPIENT; OR**

18 **(III) IF DOCUMENTED IN THE RECIPIENT'S APPLICATION FILE,**
19 **PROVIDED ORALLY BY THE RECIPIENT.**

20 **(B) A PROVIDER MAY NOT BE REQUIRED TO VERIFY THAT THE PROCEEDS**
21 **OF A COMMERCIAL FINANCING TRANSACTION ARE BEING USED IN ACCORDANCE**
22 **WITH A RECIPIENT'S STATEMENT OF INTENDED PURPOSE.**

23 **(C) THE EXTENSION OF A SPECIFIC OFFER OR PROVISION OF DISCLOSURES**
24 **FOR COMMERCIAL FINANCING BY A PROVIDER, IN AND OF ITSELF, MAY NOT BE**
25 **CONSTRUED TO MEAN THAT THE PROVIDER IS ORIGINATING, MAKING, FUNDING, OR**
26 **PROVIDING COMMERCIAL FINANCING.**

27 **12-1104.**

28 **(A) EXCEPT AS PROVIDED IN § 12-1108 OF THIS SUBTITLE, FOR PURPOSES**
29 **OF THIS SUBTITLE, AN ANNUAL PERCENTAGE RATE SHALL BE:**

30 **(1) EXPRESSED AS A YEARLY RATE, INCLUDING ALL FEES AND**
31 **FINANCE CHARGES; AND**

1 **(2)** **CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH IN**
2 **LENDING ACT.**

3 **(B)** **IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (A)(2) OF THIS**
4 **SECTION, AN ANNUAL PERCENTAGE RATE SHALL BE CALCULATED BASED ON THE**
5 **ESTIMATED TERM OF REPAYMENT AND THE PROJECTED PERIODIC PAYMENT**
6 **AMOUNTS OF A COMMERCIAL FINANCING TRANSACTION, REGARDLESS OF WHETHER**
7 **FEDERAL LAW OR REGULATION WOULD REQUIRE AN ANNUAL PERCENTAGE RATE TO**
8 **BE CALCULATED FOR A CERTAIN TRANSACTION.**

9 **12-1105.**

10 **(A)** **(1)** **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
11 **INDICATED.**

12 **(2)** **“ESTIMATED TERM OF REPAYMENT” MEANS THE AMOUNT OF**
13 **TIME REQUIRED FOR THE PERIODIC PAYMENTS MADE BY A RECIPIENT IN A**
14 **SALES-BASED FINANCING TRANSACTION TO EQUAL THE TOTAL AMOUNT REQUIRED**
15 **TO BE REPAYED.**

16 **(3)** **“TOTAL REPAYMENT AMOUNT” MEANS THE DISBURSEMENT**
17 **AMOUNT OF A SALES-BASED FINANCING TRANSACTION PLUS THE FINANCE CHARGE.**

18 **(B)** **(1)** **A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO**
19 **A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER OF SALES-BASED FINANCING:**

20 **(I)** **THE TOTAL AMOUNT OF THE SALES-BASED FINANCING AND**
21 **THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING AMOUNT,**
22 **MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;**

23 **(II)** **THE FINANCE CHARGE;**

24 **(III)** **THE ESTIMATED ANNUAL PERCENTAGE RATE OF THE**
25 **SALES-BASED FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
26 **ABBREVIATION “APR”;**

27 **(IV)** **THE TOTAL REPAYMENT AMOUNT;**

28 **(V)** **THE ESTIMATED TERM OF REPAYMENT;**

29 **(VI)** **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
30 **PROJECTED PERIODIC PAYMENT AMOUNTS;**

1 (VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND
2 CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE
3 PAYMENT FEES, AND RETURNED PAYMENT FEES; AND

4 (VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
5 REQUIREMENTS OR SECURITY INTERESTS.

6 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER
7 SHALL DISCLOSE:

8 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

9 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
10 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

11 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
12 SHALL DISCLOSE:

13 1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE
14 METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND

15 2. THE AMOUNT OF THE AVERAGE PROJECTED
16 PAYMENTS PER MONTH.

17 (C) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE SALES-BASED
18 FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A
19 PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO
20 PAY:

21 (I) ANY FINANCE CHARGES OTHER THAN THE INTEREST
22 ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND

23 (II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE
24 CHARGE.

25 (2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL
26 FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S
27 LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID
28 PORTION OF THE FINANCE CHARGE AND THE MAXIMUM DOLLAR AMOUNT THE
29 RECIPIENT COULD BE REQUIRED TO PAY.

30 12-1106.

1 **(A) (1) A PROVIDER SHALL USE THE PROJECTED SALES VOLUME OF A**
2 **RECIPIENT TO CALCULATE THE FOLLOWING INFORMATION RELATED TO A**
3 **SALES-BASED FINANCING TRANSACTION:**

4 **(I) THE ESTIMATED TERM OF REPAYMENT AND THE**
5 **PROJECTED PAYMENT AMOUNTS OF A SALES-BASED FINANCING TRANSACTION; AND**

6 **(II) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A**
7 **SALES-BASED FINANCING TRANSACTION.**

8 **(2) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A SALES-BASED**
9 **FINANCING TRANSACTION SHALL BE CALCULATED:**

10 **(I) IN ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING**
11 **ACT AND REGULATION Z, 12 C.F.R. § 1026.22; AND**

12 **(II) BASED ON THE ESTIMATED TERM OF REPAYMENT AND**
13 **PROJECTED SALES VOLUME OF A RECIPIENT.**

14 **(B) (1) A PROVIDER MAY CALCULATE THE PROJECTED SALES VOLUME OF**
15 **A RECIPIENT USING EITHER THE HISTORICAL METHOD OR THE OPT-IN METHOD.**

16 **(2) (I) A PROVIDER THAT USES THE HISTORICAL METHOD TO**
17 **CALCULATE THE PROJECTED SALES VOLUME OF A RECIPIENT SHALL USE AN**
18 **AVERAGE HISTORICAL VOLUME OF SALES OR REVENUE.**

19 **(II) A PROVIDER SHALL FIX THE HISTORICAL TIME PERIOD**
20 **USED TO CALCULATE THE AVERAGE HISTORICAL VOLUME AND USE THE SAME TIME**
21 **PERIOD FOR ALL DISCLOSURE PURPOSES FOR ANY SALES-BASED FINANCING**
22 **TRANSACTION PRODUCTS OFFERED.**

23 **(III) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS**
24 **PARAGRAPH, THE FIXED HISTORICAL TIME PERIOD:**

25 **1. MAY NOT BE LESS THAN 1 MONTH AND MAY NOT**
26 **EXCEED 12 MONTHS; AND**

27 **2. SHALL BE THE TIME PERIOD DIRECTLY BEFORE THE**
28 **SPECIFIC OFFER WAS MADE.**

29 **(IV) A PROVIDER MAY CHOOSE TO USE THE AVERAGE SALES FOR**
30 **THE SAME NUMBER OF MONTHS AS THE PROVIDER WOULD HAVE USED UNDER**

1 PARAGRAPH (3) OF THIS SUBSECTION WITH THE HIGHEST SALES VOLUME WITHIN
2 THE PAST 12 MONTHS.

3 (3) A PROVIDER MAY USE THE OPT-IN METHOD TO DETERMINE THE
4 INFORMATION LISTED UNDER SUBSECTION (A)(1) OF THIS SECTION BY USING A
5 PROJECTED SALES VOLUME THAT THE PROVIDER CHOOSES FOR EACH DISCLOSURE
6 IF THE RECIPIENT PARTICIPATES IN A REVIEW PROCESS ESTABLISHED BY THE
7 COMMISSIONER.

8 (C) A PROVIDER SHALL NOTIFY THE COMMISSIONER WHICH OF THE TWO
9 METHODS THE PROVIDER INTENDS TO USE WHEN CALCULATING THE ESTIMATED
10 ANNUAL PERCENTAGE OF EACH SALES-BASED FINANCING TRANSACTION.

11 (D) (1) ON OR BEFORE JANUARY 1 EACH YEAR, A PROVIDER SHALL
12 REPORT TO THE COMMISSIONER ON:

13 (I) THE ESTIMATED ANNUAL PERCENTAGE RATES GIVEN TO
14 EACH RECIPIENT; AND

15 (II) THE ACTUAL ANNUAL PERCENTAGE RATES OF EACH
16 COMPLETED SALES-BASED FINANCING TRANSACTION.

17 (2) (I) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
18 SUBSECTION SHALL CONTAIN ANY INFORMATION THE COMMISSIONER CONSIDERS
19 NECESSARY TO DETERMINE WHETHER THE DEVIATION BETWEEN THE ESTIMATED
20 ANNUAL PERCENTAGE RATES AND ACTUAL ANNUAL PERCENTAGE RATES OF
21 COMPLETED SALES-BASED FINANCING TRANSACTIONS IS REASONABLE.

22 (II) THE COMMISSIONER MAY CONSIDER EXTRAORDINARY
23 CIRCUMSTANCES WHEN DETERMINING WHETHER THE PROVIDER'S DEVIATION
24 BETWEEN THE ESTIMATED ANNUAL PERCENTAGE RATE AND ACTUAL ANNUAL
25 PERCENTAGE RATE OF A SALES-BASED FINANCING TRANSACTION IS REASONABLE.

26 (III) IF THE COMMISSIONER FINDS THAT THERE WAS AN
27 UNREASONABLE DEVIATION BETWEEN ESTIMATED AND ACTUAL ANNUAL
28 PERCENTAGE RATES OF SALES-BASED FINANCING TRANSACTIONS, THE
29 COMMISSIONER MAY REQUIRE THE PROVIDER TO USE THE HISTORICAL METHOD
30 INSTEAD OF THE OPT-IN METHOD IN DETERMINING THE PROJECTED SALES VOLUME
31 OF THE RECIPIENT.

32 12-1107.

33 (A) IN THIS SECTION, "TOTAL REPAYMENT AMOUNT" MEANS THE

1 DISBURSEMENT AMOUNT OF A CLOSED-END FINANCING TRANSACTION PLUS THE
2 FINANCE CHARGE.

3 (B) (1) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO
4 A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR CLOSED-END FINANCING:

5 (I) THE TOTAL AMOUNT OF THE CLOSED-END FINANCING AND
6 THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING AMOUNT,
7 MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;

8 (II) THE TOTAL REPAYMENT AMOUNT;

9 (III) THE FINANCE CHARGE;

10 (IV) THE ANNUAL PERCENTAGE RATE OF THE CLOSED-END
11 FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE
12 ABBREVIATION "APR";

13 (V) THE TERM OF THE FINANCING;

14 (VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
15 PROJECTED PERIODIC PAYMENT AMOUNTS;

16 (VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND
17 CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE
18 PAYMENT FEES, AND RETURNED PAYMENT FEES; AND

19 (VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
20 REQUIREMENTS OR SECURITY INTERESTS.

21 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER
22 SHALL DISCLOSE:

23 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

24 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
25 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

26 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
27 SHALL DISCLOSE:

28 1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE
29 METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND

1 **2. THE AMOUNT OF THE AVERAGE PROJECTED**
2 **PAYMENTS PER MONTH.**

3 **(3) THE ANNUAL PERCENTAGE RATE REQUIRED TO BE DISCLOSED**
4 **UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION SHALL BE:**

5 **(I) EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES**
6 **AND FINANCE CHARGES THAT CANNOT BE AVOIDED BY A RECIPIENT; AND**

7 **(II) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH**
8 **IN LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026.22, REGARDLESS OF**
9 **WHETHER THE ACT OR REGULATION WOULD REQUIRE THE CALCULATION.**

10 **(C) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE CLOSED-END**
11 **FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A**
12 **PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO**
13 **PAY:**

14 **(I) ANY FINANCE CHARGES OTHER THAN THE INTEREST**
15 **ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND**

16 **(II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE**
17 **CHARGE.**

18 **(2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL**
19 **FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S**
20 **LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID**
21 **PORTION OF THE FINANCE CHARGE AND MAXIMUM DOLLAR AMOUNT THE**
22 **RECIPIENT COULD BE REQUIRED TO PAY.**

23 **12-1108.**

24 **(A) IN THIS SECTION, "TOTAL REPAYMENT AMOUNT" MEANS THE DRAW**
25 **AMOUNT OF THE OPEN-END FINANCING TRANSACTION, MINUS ANY FEES DEDUCTED**
26 **OR WITHHELD AT DISBURSEMENT, PLUS THE FINANCE CHARGE.**

27 **(B) (1) WHEN CALCULATING THE TOTAL REPAYMENT AMOUNT IN**
28 **ACCORDANCE WITH THIS SECTION, A PROVIDER SHALL ASSUME A DRAW AMOUNT**
29 **EQUAL TO THE MAXIMUM AMOUNT OF CREDIT AVAILABLE TO THE RECIPIENT IF**
30 **DRAWN AND HELD FOR THE DURATION OF THE TERM OR DRAW PERIOD.**

31 **(2) WHEN CALCULATING A FINANCE CHARGE IN ACCORDANCE WITH**

1 THIS SECTION, A PROVIDER SHALL ASSUME THE MAXIMUM AMOUNT OF CREDIT
2 AVAILABLE TO THE RECIPIENT, IN EACH CASE, IS DRAWN AND HELD FOR THE
3 DURATION OF THE TERM OF THE DRAW PERIOD.

4 (C) (1) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO
5 A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR OPEN-END FINANCING:

6 (I) THE MAXIMUM AMOUNT OF CREDIT AVAILABLE TO THE
7 RECIPIENT AND THE AMOUNT SCHEDULED TO BE DRAWN BY THE RECIPIENT AT THE
8 TIME THE OFFER IS EXTENDED, IF ANY, MINUS ANY FEES DEDUCTED OR WITHHELD
9 AT DISBURSEMENT;

10 (II) THE FINANCE CHARGE;

11 (III) THE TOTAL REPAYMENT AMOUNT;

12 (IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL
13 FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE
14 ABBREVIATION "APR";

15 (V) THE TERM OF THE PLAN, IF APPLICABLE, OR THE PERIOD
16 OVER WHICH A DRAW IS AMORTIZED;

17 (VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
18 PAYMENT FREQUENCY AND AMOUNTS;

19 (VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND
20 CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE
21 PAYMENT FEES, AND RETURNED PAYMENT FEES; AND

22 (VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
23 REQUIREMENTS OR SECURITY INTERESTS.

24 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER
25 SHALL DISCLOSE:

26 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

27 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
28 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

29 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
30 SHALL DISCLOSE:

1 **1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE**
2 **METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND**

3 **2. THE AMOUNT OF THE AVERAGE PROJECTED**
4 **PAYMENTS PER MONTH.**

5 **(3) THE ANNUAL PERCENTAGE RATE REQUIRED TO BE DISCLOSED**
6 **UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION SHALL BE:**

7 **(I) EXPRESSED AS A NOMINAL YEARLY RATE, INCLUSIVE OF**
8 **ANY FEES AND FINANCE CHARGES THAT CANNOT BE AVOIDED BY A RECIPIENT;**

9 **(II) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH**
10 **IN LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026.22; AND**

11 **(III) BASED ON THE MAXIMUM AMOUNT OF CREDIT AVAILABLE**
12 **TO THE RECIPIENT AND THE TERM RESULTING FROM MAKING THE MINIMUM**
13 **REQUIRED PAYMENTS AS DISCLOSED, REGARDLESS OF WHETHER THE ACT OR**
14 **REGULATION WOULD REQUIRE THE CALCULATION.**

15 **(D) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE OPEN-END**
16 **FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A**
17 **PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO**
18 **PAY:**

19 **(I) ANY FINANCE CHARGES OTHER THAN THE INTEREST**
20 **ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND**

21 **(II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE**
22 **CHARGE.**

23 **(2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL**
24 **FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S**
25 **LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID**
26 **PORTION OF THE FINANCE CHARGE AND MAXIMUM DOLLAR AMOUNT THE**
27 **RECIPIENT COULD BE REQUIRED TO PAY.**

28 **12-1109.**

29 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
30 **INDICATED.**

1 **(2) “FINANCE CHARGE” INCLUDES A DISCOUNT TAKEN ON THE FACE**
2 **VALUE OF THE ACCOUNTS RECEIVABLE.**

3 **(3) “TOTAL PAYMENT AMOUNT” MEANS THE PURCHASE AMOUNT OF**
4 **THE FACTORING TRANSACTION PLUS THE FINANCE CHARGE.**

5 **(B) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO A**
6 **RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR A FACTORING TRANSACTION:**

7 **(1) THE AMOUNT OF THE RECEIVABLES PURCHASE PRICE PAID TO**
8 **THE RECIPIENT AND, IF DIFFERENT FROM THE PURCHASE PRICE, THE**
9 **DISBURSEMENT AMOUNT AFTER ANY FEES DEDUCTED OR WITHHELD AT**
10 **DISBURSEMENT;**

11 **(2) THE TOTAL PAYMENT AMOUNT;**

12 **(3) THE FINANCE CHARGE;**

13 **(4) THE ANNUAL PERCENTAGE RATE OF THE FACTORING**
14 **TRANSACTION, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
15 **ABBREVIATION “APR”, CALCULATED ACCORDING TO THE FEDERAL TRUTH IN**
16 **LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026, APPENDIX J, AS A “SINGLE**
17 **ADVANCE, SINGLE PAYMENT TRANSACTION”;**

18 **(5) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND CHARGES**
19 **THAT CAN BE AVOIDED BY THE RECIPIENT; AND**

20 **(6) A DESCRIPTION OF THE RECEIVABLES PURCHASED AND, IF**
21 **APPLICABLE, ANY ADDITIONAL COLLATERAL REQUIREMENTS OR SECURITY**
22 **INTERESTS.**

23 **(C) (1) FOR PURPOSES OF THIS SUBSECTION, ANNUAL PERCENTAGE**
24 **RATE SHALL BE CALCULATED ACCORDING TO THE FEDERAL TRUTH IN LENDING**
25 **ACT AND REGULATION Z, 12 C.F.R. § 1026, APPENDIX J, AS A “SINGLE ADVANCE,**
26 **SINGLE PAYMENT TRANSACTION”, REGARDLESS OF WHETHER FEDERAL LAW OR**
27 **REGULATION WOULD REQUIRE AN ANNUAL PERCENTAGE RATE TO BE CALCULATED**
28 **FOR A CERTAIN TRANSACTION.**

29 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A**
30 **PROVIDER SHALL USE THE FOLLOWING INFORMATION TO CALCULATE THE**
31 **ESTIMATED ANNUAL PERCENTAGE RATE IN ACCORDANCE WITH THIS SECTION:**

32 **1. THE PURCHASE AMOUNT IS THE FINANCING AMOUNT;**

1 **2. THE PAYMENT AMOUNT IS THE PURCHASE AMOUNT**
2 **MINUS THE FINANCE CHARGE; AND**

3 **3. THE TERM OF THE FACTORING TRANSACTION IS**
4 **DETERMINED BY THE PAYMENT DUE DATE OF THE RECEIVABLES.**

5 **(II) A PROVIDER MAY ESTIMATE THE TERM FOR A FACTORING**
6 **TRANSACTION AS THE AVERAGE PAYMENT PERIOD, USING HISTORICAL DATA OVER**
7 **A PERIOD NOT TO EXCEED THE PREVIOUS 12 MONTHS, CONCERNING PAYMENT**
8 **INVOICES PAID BY THE PARTY OWING THE ACCOUNTS RECEIVABLE IN QUESTION.**

9 **12-1110.**

10 **(A) IN THIS SECTION, “TOTAL REPAYMENT AMOUNT” MEANS THE**
11 **DISBURSEMENT AMOUNT OF A COMMERCIAL FINANCING TRANSACTION PLUS THE**
12 **FINANCE CHARGE.**

13 **(B) A PROVIDER MAY EXTEND A SPECIAL OFFER OF COMMERCIAL**
14 **FINANCING THAT IS NOT AN OPEN-END FINANCING, CLOSED-END FINANCING,**
15 **SALES-BASED FINANCING, OR A FACTORING TRANSACTION BUT OTHERWISE MEETS**
16 **THE DEFINITION OF COMMERCIAL FINANCING UNDER THIS SUBTITLE.**

17 **(C) (1) IF A PROVIDER EXTENDS A SPECIAL OFFER THAT IS NOT AN**
18 **OPEN-END FINANCING, CLOSED-END FINANCING, SALES-BASED FINANCING, OR A**
19 **FACTORING TRANSACTION BUT OTHERWISE MEETS THE DEFINITION OF**
20 **COMMERCIAL FINANCING UNDER THIS SUBTITLE, THE PROVIDER SHALL DISCLOSE:**

21 **(I) THE TOTAL AMOUNT OF THE COMMERCIAL FINANCING**
22 **INCLUDING THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING**
23 **AMOUNT, MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;**

24 **(II) THE TOTAL REPAYMENT AMOUNT;**

25 **(III) THE FINANCE CHARGE;**

26 **(IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL**
27 **FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
28 **ABBREVIATION “APR”, EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES**
29 **AND FINANCE CHARGES, AND CALCULATED IN ACCORDANCE WITH THE RELEVANT**
30 **SECTIONS OF THE FEDERAL TRUTH IN LENDING ACT, REGULATION Z, 12 C.F.R. §**
31 **1026.22 OR THIS ARTICLE, REGARDLESS OF WHETHER THE ACT, THE REGULATION,**
32 **OR THIS ARTICLE WOULD REQUIRE THE CALCULATION;**

1 (V) THE TERM OF THE COMMERCIAL FINANCING;

2 (VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
3 PAYMENT FREQUENCY AND AMOUNTS;

4 (VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND
5 CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING LATE PAYMENT
6 FEES AND RETURNED PAYMENT FEES; AND

7 (VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
8 REQUIREMENTS OR SECURITY INTERESTS.

9 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER
10 SHALL DISCLOSE:

11 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

12 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
13 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

14 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
15 SHALL DISCLOSE:

16 1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE
17 METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND

18 2. THE AMOUNT OF THE AVERAGE PROJECTED
19 PAYMENTS PER MONTH.

20 (D) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE COMMERCIAL
21 FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A
22 PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO
23 PAY:

24 (I) ANY FINANCE CHARGES OTHER THAN THE INTEREST
25 ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND

26 (II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE
27 CHARGE.

28 (2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL
29 FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S

1 LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID
2 PORTION OF THE FINANCE CHARGE AND MAXIMUM DOLLAR AMOUNT THE
3 RECIPIENT COULD BE REQUIRED TO PAY.

4 12-1111.

5 (A) A PROVIDER MAY REQUIRE A RECIPIENT TO PAY OFF THE BALANCE OF
6 AN EXISTING COMMERCIAL FINANCING TRANSACTION FROM THE SAME PROVIDER
7 AS A CONDITION OF OBTAINING A NEW OR RENEWAL COMMERCIAL FINANCING
8 TRANSACTION.

9 (B) IF A PROVIDER REQUIRES A RECIPIENT TO PAY OFF A COMMERCIAL
10 FINANCING TRANSACTION BEFORE OBTAINING A NEW OR RENEWAL COMMERCIAL
11 FINANCING TRANSACTION, THE PROVIDER SHALL DISCLOSE:

12 (1) THE AMOUNT OF THE NEW OR RENEWAL COMMERCIAL FINANCING
13 THAT WILL BE USED TO PAY OFF THE PORTION OF THE EXISTING COMMERCIAL
14 FINANCING THAT CONSISTS OF ANY REQUIRED PREPAYMENT CHARGES; AND

15 (2) ANY UNPAID INTEREST THAT WAS NOT FORGIVEN AT THE TIME
16 THE NEW OR RENEWAL COMMERCIAL FINANCING WAS ENTERED INTO.

17 (C) (1) FOR FINANCING FOR WHICH THE TOTAL REPAYMENT AMOUNT IS
18 CALCULATED AS A FIXED AMOUNT, THE PREPAYMENT CHARGE IS EQUAL TO THE
19 ORIGINAL FINANCE CHARGE MULTIPLIED BY THE AMOUNT OF THE NEW OR
20 RENEWAL COMMERCIAL FINANCING USED TO PAY OFF THE EXISTING COMMERCIAL
21 FINANCING TRANSACTION AS A PERCENTAGE OF THE TOTAL REPAYMENT AMOUNT,
22 MINUS ANY PORTION OF THE TOTAL REPAYMENT AMOUNT FORGIVEN BY THE
23 PROVIDER AT THE TIME OF PREPAYMENT.

24 (2) IF THE PREPAYMENT CHARGE IS MORE THAN ZERO, THE
25 PROVIDER SHALL RECORD THE AMOUNT AS THE ANSWER TO THE FOLLOWING
26 QUESTION:

27 “DOES THE NEW OR RENEWAL COMMERCIAL FINANCING TRANSACTION INCLUDE
28 ANY AMOUNT THAT IS USED TO PAY UNPAID FINANCE CHARGE OR FEES, ALSO
29 KNOWN AS DOUBLE DIPPING? YES, [ENTER AMOUNT]”.

30 (D) IF THE DISBURSEMENT AMOUNT OF THE NEW OR RENEWAL
31 COMMERCIAL FINANCING TRANSACTION WILL BE REDUCED TO PAY DOWN ANY
32 UNPAID PORTION OF THE OUTSTANDING BALANCE OF THE EXISTING COMMERCIAL
33 FINANCING, THE PROVIDER SHALL DISCLOSE THE ACTUAL DOLLAR AMOUNT BY
34 WHICH THE DISBURSEMENT AMOUNT WILL BE REDUCED.

1 12-1112.

2 A RECIPIENT SHALL SIGN, MANUALLY OR ELECTRONICALLY, EACH
3 APPLICABLE DISCLOSURE REQUIRED UNDER THIS SUBTITLE BEFORE A PROVIDER
4 MAY ALLOW THE RECIPIENT TO PROCEED WITH THE COMMERCIAL FINANCING
5 APPLICATION.

6 12-1113.

7 (A) (1) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A
8 PROVIDER FROM DISCLOSING ADDITIONAL INFORMATION TO A RECIPIENT
9 REGARDING A COMMERCIAL FINANCING TRANSACTION.

10 (2) IF A PROVIDER PROVIDES ADDITIONAL DISCLOSURES TO A
11 RECIPIENT OTHER THAN WHAT IS REQUIRED BY THIS SUBTITLE, THE ADDITIONAL
12 DISCLOSURE IS NOT CONSIDERED A REQUIRED DISCLOSURE UNDER THIS SUBTITLE.

13 (B) (1) IF ADDITIONAL METRICS OF FINANCING COSTS ARE DISCLOSED
14 OR USED IN THE APPLICATION PROCESS FOR COMMERCIAL FINANCING, THE
15 ADDITIONAL METRICS MAY NOT BE PRESENTED AS A RATE IF THEY ARE NOT THE
16 ANNUAL INTEREST RATE OR THE ANNUAL PERCENTAGE RATE.

17 (2) THE TERM "INTEREST", WHEN USED TO DESCRIBE A PERCENTAGE
18 RATE, MAY BE USED ONLY TO DESCRIBE ANNUALIZED PERCENTAGE RATES,
19 INCLUDING THE ANNUAL INTEREST RATE.

20 (C) IF A PROVIDER STATES A RATE OF FINANCE CHARGE OR A FINANCING
21 AMOUNT TO A RECIPIENT DURING THE APPLICATION PROCESS FOR COMMERCIAL
22 FINANCING, THE PROVIDER SHALL ALSO STATE THE RATE AS AN "ANNUAL
23 PERCENTAGE RATE", USING THAT TERM OR THE ABBREVIATION "APR".

24 12-1114.

25 TO CARRY OUT THIS SUBTITLE, THE COMMISSIONER SHALL ADOPT
26 REGULATIONS SUBSTANTIALLY THE SAME AS REGULATIONS ADOPTED BY THE NEW
27 YORK STATE DEPARTMENT OF FINANCIAL SERVICES REGARDING COMMERCIAL
28 FINANCING.

29 12-1115.

30 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR, ABUSIVE, OR DECEPTIVE
31 TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW

1 ARTICLE AND IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
2 CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

3 (B) (1) THE COMMISSIONER SHALL IMPOSE A CIVIL PENALTY, NOT
4 EXCEEDING:

5 (I) \$ 2,000, FOR EACH VIOLATION OF THIS SUBTITLE; AND

6 (II) \$10,000, FOR EACH WILLFUL VIOLATION OF THIS SUBTITLE.

7 (2) THE COMMISSIONER MAY ORDER ADDITIONAL RELIEF,
8 INCLUDING RESTITUTION OR A PERMANENT OR PRELIMINARY INJUNCTION ON
9 BEHALF OF A RECIPIENT AFFECTED BY A VIOLATION OF THIS SUBTITLE.

10 (C) IF A COMPLAINT ABOUT A VIOLATION OF THIS SUBTITLE IS FILED WITH
11 THE COMMISSIONER, THE COMMISSIONER MAY INVESTIGATE THE COMPLAINT AND
12 USE ANY OF THE INVESTIGATIVE AND ENFORCEMENT POWERS PROVIDED UNDER
13 TITLE 2, SUBTITLE 1 OF THIS ARTICLE.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2022.